Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby respectfully submits its comments on the petitions for reconsideration and clarification of the *Lifeline Modernization Order*[1] filed on June 23, 2016 in the above-captioned proceedings.

1. Introduction and Summary.

Sprint supports reconsideration of three aspects of the *Lifeline Modernization Order*: the average usage formula to be used to determine minimum mobile broadband usage allotments for 2019 and beyond; the halving of the inactivity period which leads to de-enrollment; and the rolling recertification rule. Sprint also supports clarification of the role of states in Lifeline regulatory compliance and enforcement, and of a safe harbor policy for service providers that rely upon state or federal databases to determine end user eligibility to participate in the Lifeline program. Reconsideration or clarification of these points will significantly improve the fairness and effectiveness of the Lifeline program without compromising efforts to minimize waste, fraud and abuse.

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[1] *Lifeline and Link Up Reform and Modernization, Third Report and Order, Further Report and Order, and Order on Reconsideration*, 31 FCC Rcd 3962 (2016).

2. The Formula for Establishing the Minimum Mobile Broadband Usage Allotment Is Flawed and Fails to Consider Affordability.

In the *Lifeline Modernization Order* (para. 94), the Commission adopted a formula to determine the minimum mobile broadband data usage allowance beginning December 1, 2019. Under this formula, codified in Section 54.408(c)(2) of the Commission's Rules, the minimum data allowance for mobile broadband Lifeline service will be set at 70% of the calculated average mobile data usage per household. CTIA (p. 2), TracFone (p. 12) and Joint ETC petitioners[2] (p. 3) have requested reconsideration of this issue, explaining that setting the data allowance based on this formula fails to take into account affordability, and that the average usage per household standard does not accurately reflect usage allotments that are necessary for "meaningful participation in the digital economy."[3] CTIA also pointed out that the relevant rule and the Order include conflicting directions.

The Commission should grant these requests for reconsideration of the use of the 70% formula to compute future broadband data allowances for Lifeline subscribers. Sprint, like all other parties, acknowledges the critical role broadband access plays in today's economy, and reiterates its support for efforts to make broadband access a reality for all consumers, particularly low income Americans whose broadband adoption rates lag significantly below the average. However, the formula-based approach adopted in the *Lifeline Modernization Order* is unlikely to materially increase broadband adoption by

[2] American Broadband & Telecommunications Company, Blue Jay Wireless, LLC, i-wireless LLC, Telrite Corporation, Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC and Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect) filed a joint petition for reconsideration.

[3] TracFone, p. 17.

Lifeline customers, and in fact could well have the perverse effect of limiting or even decreasing adoption rates by setting minimum data allotment thresholds that will be prohibitively expensive for low income consumers. Because the formula to be used ignores affordability, results in an excessively high minimum data allotment, limits consumer choice, and introduces uncertainty, its use should be reconsidered.

Attaining universal service is a function not only of availability, but also of affordability. It seems highly likely that formula-based minimum data allotments based on "average" broadband usage will increase over time, and at a rate greater than anticipated decreases in the cost of providing mobile broadband service and certainly at a rate greater than any planned increase in the Lifeline subsidy (currently, zero expectation of any such increase). If the cost of providing broadband service exceeds the Lifeline subsidy, low income consumers will be faced with out-of-pocket service charges which they can ill afford. As is clear from the record below, Lifeline-eligible households face such severe financial constraints that the assessment of any out-of-pocket charges, for either service or equipment, will place broadband service beyond the financial reach of much, even most, of this market.[4]

The explicit data allowances mandated through 2018 (500 MB per month of 3G data as of Dec. 1, 2016; 1 GB per month as of Dec. 1, 2017; and 2 GB per month as of Dec. 1, 2018) present an aggressive challenge, and Sprint expects that a formula-based

[4] *See* TracFone Petition for Reconsideration, p. ii ("TracFone learned through its participation in the Commission's broadband pilot programs that low-income consumers will not purchase Lifeline-supported broadband service even if the cost is modest"); *see also* comments of Sprint filed August 31, 2015 in this proceeding, pp. 19-20 (Sprint's Virgin Mobile affiliate experienced lower than anticipated subscription rates for its broadband offers in the Commission's Lifeline broadband pilot program due in large part to Lifeline customers' inability or unwillingness to pay even modest out-of-pocket charges).

approach will result in even higher minimum data allotments over time. Insofar as Sprint is aware, there currently are no retail mobile broadband plans at even 500 MB per month that are priced at $9.25 or less, and plans offering 2-3 GB of mobile data are generally priced in excess of $50. Even assuming that the cost of providing mobile broadband service will decline over the next few years, and that Lifeline service providers will compete aggressively on price, it is difficult to imagine that Lifeline mobile broadband service can be offered without an out-of-pocket charge which, moreover, is likely to increase over time in conjunction with increasing data allotments.

In addition to the lack of consideration of affordability, it is not at all clear that the formula-based approach reasonably or accurately reflects the amount of mobile broadband data a Lifeline customer needs to function in today's digital world. Average usage by non-Lifeline customers is skewed by extremely heavy users – a retail customer with a high allowance or unlimited data plan (available only at a monthly recurring charge) can easily consume many gigabytes of data per month watching streaming videos, listening to streaming music, or participating in video chat sessions[5] -- and by non-Lifeline households with multiple smartphones.[6] Moreover, network improvements that enable higher speeds will increase utilization because consumers can use more data

[5] Verizon Wireless has noted that a small number of its subscribers on an unlimited data plan have consumed over 100 GB of data per month (see http://arstechnica.com/information-technology/2016/07/verizon-to-disconnect-unlimited-data-customers-who-use-over-100gbmonth/). Even less extreme users can easily consume substantial amounts of data. For example, according to Netflix, streaming one hour of HD video can consume up to 3GB of data. *See* https://help.netflix.com/en/node/87.

[6] As Joint ETC Petitioners (p. 3) and TracFone (p. 14) have pointed out, the formula is based on the number of smartphones per household, not on average usage per person. Because a Lifeline household is allowed to have only one Lifeline-supported broadband device, a per household standard will likely be higher than a per Lifeline (one person) standard.

in the same amount of time. High average usage levels will result in minimum data allotments for Lifeline customers that not only are expensive to provide, but also reflect non-essential data applications (*i.e.*, applications not needed for doing homework, searching for jobs, or engaging other essential digital communications). While Sprint has no desire to force Lifeline customers into second class status, it is not financially feasible to offer a Lifeline mobile broadband plan with very high data allotments without an end user charge that may well prove unaffordable to Lifeline-eligible households.

Use of the 70% formula also decreases consumer choice. It may well be that some Lifeline customers are willing and able to make do with a lower data allotment in exchange for a lower price. However, using the formula to set a minimum data allotment forecloses the possibility of a more modest but more affordable Lifeline-supported mobile broadband package.

Finally, the formula introduces uncertainty into the Lifeline market. Service providers' ability to plan is complicated by the fact that they will not know with reasonable certainty what the minimum data allotment may be after 2018 or what end user charge in excess of the Lifeline subsidy they may need to plan for. This type of uncertainty does not encourage market entry by potential new competitors, or market expansion by existing competitors.

Given the problems associated with the formula discussed above, the Commission should grant the instant petitions for reconsideration and abandon use of the formula to set minimum mobile broadband allotments. Instead, it should maintain the minimum data allotment at 2 GB (mandated for December 1, 2018) and consider whether any change in that allotment is advisable as part of the scheduled program review.

3. The Inactivity Period Should Remain at 60 Days, As 30 Days Is Too Short.

Under current Lifeline rules, customers who do not use their Lifeline service for 60 consecutive days receive a notice that they will lose their Lifeline benefit if they do not cure their inactivity within 30 days.[7] The *Lifeline Modernization Order* (para. 415) halved the inactivity period and notification periods to 30 and 15 days, respectively. A 30-day inactivity period will result in very high churn, leaving mobile Lifeline customers without critical voice or data service and driving up program and service provider costs. Therefore, the Commission should, as TracFone has requested (Petition for Reconsideration, p. 23), retain the current 60/30-day inactivity and notification standard.

An analysis of inactivity by Sprint's Lifeline customers confirms that implementation of a 30-day inactivity window is likely to cause a substantial increase in inadvertent (by the subscriber) de-enrollments. Sprint identified three primary causes of inactivity: lost or misplaced handset (19%); subscriber in the hospital (16%); and broken handset (6%). None of these causes is related to disinterest in or lack of need for Lifeline service, but rather reflects circumstances largely beyond the subscriber's control.

The Sprint data further shows that of customers who had no activity for a 30 day period, 38% resumed their Lifeline usage within the subsequent 15 days and 66% within the subsequent 60 days. Halving the inactivity and notification period from 90 to 45 days thus will likely force large numbers of low-income customers off the Lifeline program – customers who are otherwise eligible for the Lifeline benefit and the majority of whom do in fact register usage within a 90-day period. The interruption in Lifeline service and

[7] The inactivity rule applies only to carriers that do not bill their Lifeline customers on a monthly basis.

the effort of re-applying constitutes a genuine hardship for Lifeline-eligible consumers, and the re-application/re-enrollment process increases administrative costs for both the program administrator (USAC) and service providers.

The Commission justified the reduction in the inactivity/notification periods based on its decision to include outbound texting and usage of data as usage for purposes of determining inactivity (*Lifeline Modernization Order*, para. 415). Sprint supports the use of texting as a means of demonstrating usage; however, the *Order* does not explain why halving the inactivity and notice periods is a reasonable "trade off" (TracFone, p. 23) for expanding the definition of usage to include outbound texting. In fact, Sprint estimates that the increase in de-enrollments associated with a 30-day inactivity period will be significantly larger than the number of subscribers who remain enrolled because they had sent a text or used data.[8]

Finally, the Commission should consider the customer confusion that will accompany the halving of the inactivity and notification periods. Sprint and other Lifeline service providers have made a concerted effort and have made significant investments to educate their customers about the federal inactivity rule since it was adopted in 2012. Changing the inactivity rule will require additional investment in customer education, and will add to the confusion and upset customers experience when their Lifeline service is about to be or has been terminated.

[8] Sprint previously stated that 18% of Assurance Wireless subscribers who were de-enrolled for non-usage (*i.e.*, no voice calls) in February 2015 had sent at least one text message in the previous 60 days (*see* Sprint's August 31, 2015 comments in this docket, pp. 29-30). In analyzing the impact of the much shorter inactivity/notification period, Sprint found that only 4% of its Assurance Wireless customers sent a text or used data in the 30 days prior to de-enrollment.

4. Recertification Should Be Performed on a Fixed Annual Basis Rather Than on a Rolling Basis.

In the *Lifeline Modernization Order* (para. 417), the Commission replaced the annual recertification process under which all recertifications are required to be completed as of December 31, with a rolling process under which the recertification date varies based on the subscriber's service initiation date. NTCA/WTA (p. 12), GCI (p. 1), and USTA (p. 2) have requested reconsideration of the rolling recertification process. Their petitions should be granted. Rolling recertification will be confusing to Lifeline customers and costly to service providers, and it is unclear that state databases will be able to accommodate rolling recertification.

Today, subscribers recertify their eligibility to continue to participate in the Lifeline program by December 31. Sprint's Assurance Wireless affiliate, like other service providers, has expended considerable resources educating Lifeline customers about this process, and after several years under this approach, believes that the bulk of existing Lifeline customers is generally familiar with the recertification requirements. Sprint is concerned that a switch to a rolling recertification process will be confusing to subscribers, and because they have come to expect the recertification request in late fall/early winter, may ignore recertification requests sent to them at other times of the year.

The Commission justified adoption of the rolling recertification process on the grounds that it would "result in administrative efficiencies and avoid imposing undue burdens on providers, USAC, or the National Verifier."[9] However, neither the record below nor the Order elaborates on these purported efficiencies. To the contrary, as the

[9] *Lifeline Modernization Order*, para. 416.

three petitioners correctly pointed out, performing rolling recertifications will require service providers to "modify systems to identify and track, on a subscriber-by-subscriber basis, the date by which the recertification process must be initiated."[10] Sprint agrees; it estimates that revising its current internal recertification systems and procedures to accommodate a rolling schedule will cost approximately $481,000 per year.[11] Moreover, it is unclear whether state eligibility databases can accommodate rolling recertification, and if not, whether the states are willing or able to devote the resources to retrofit their databases. Significantly, the Commission did not suggest that rolling recertification will be any more effective at combating waste, fraud and abuse than is the current recertification process; in other words, rolling recertification imposes costs without any identifiable countervailing benefits.

Finally, the rolling recertification process will change once the National Verifier is operational.[12] It makes little sense to force Lifeline service providers to incur the costs of changing their systems and procedures to implement a rolling recertification process that will be in effect only pending deployment of the National Verifier.

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[10] GCI Petition for Reconsideration, p. 5; *see also*, NTCA/WTA Petition for Reconsideration, p. 14 (the move to rolling recertification is "unnecessary and will be more administratively burdensome for smaller Lifeline providers"), and US Telecom Petition for Reconsideration, p. 3 (rolling recertification will "impose significant administrative burdens on Lifeline providers who already have processes in place for managing recertifications under the existing Lifeline rules").

[11] This estimate includes costs associated with direct mail, account reviews and application processing efforts due to increased de-activations and incremental re-activations.

[12] *Lifeline Modernization Order*, para. 418 ("…after the National Verifier has been implemented in a state, the National Verifier's eligibility records for a subscriber will permit the National Verifier to only recertify the subscriber's eligibility every 12 months after the subscriber's first initiation of a Lifeline-discounted service").

5. Clarification Regarding Regulatory Enforcement and Liability

The Pennsylvania PUC (PAPUC) has asked for clarification about states' role in regulatory enforcement and consumer protections as they apply to federally designated Lifeline Broadband Providers (LBPs). The PAPUC pointed out (p. 10) that the regulatory framework for LBPs adopted in the *Lifeline Modernization Order* "has the potential to create a bifurcated and convoluted regulatory enforcement scheme" which is confusing to consumers and service providers alike.

Sprint agrees that clarification is warranted here. In the event that a Lifeline service provider is suspected of a regulatory violation or lapse, it is in the interest of all parties involved to have clear jurisdictional ground rules. It makes little sense to have parallel and possibly conflicting state and federal enforcement tracks for the same violation.

Although the PAPUC's petition for clarification does not directly raise the issue of a safe harbor regarding regulatory enforcement generally, Sprint urges the Commission to also clarify that service providers that rely upon state databases to determine an end user's eligibility to participate, or to continue to participate, in the federal Lifeline program will be held harmless if the information in the state databases turns out to be incorrect. Such clarification would be entirely consistent with the Commission's approach to lapses that are due to factors beyond the service provider's control. For example, the Commission has stated that "[b]y adopting the National Verifier, the risk of enforcement actions against providers for eligibility related issues will decline as the National Verifier takes on the risk of determining eligibility for

subscribers."[13] Similarly, in the E-rate program, the Commission revised its rules relating to recovery of funds disbursed in error to ensure that service providers are not held liable for errors committed by other parties.[14]

Respectfully submitted,

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[13] *Lifeline Modernization Order*, para. 130.

[14] *See Federal-State Joint Board on Universal Service, Order on Reconsideration and Fourth Report and Order*, 19 FCC Rcd 15252, para.12 (2004) ("…in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are now convinced that it is both unrealistic and inequitable to seek recovery [of funds disbursed in error] solely from the service provider").